



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Intra-Med Services, Inc.

File: B-272012

Date: August 8, 1996

Daniel R. Weckstein, Esq., and Howard W. Roth III, Esq., Vandeventer, Black, Meredith & Martin, for the protester.

Terence Murphy, Esq., and L. Allan Parrott, Jr., Esq., Kaufman & Canoles, for Medical Technologies of Hampton Roads, an intervenor.

Diane-Marie Carrero, Esq., Department of the Navy, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the awardee's proposal contained a material misrepresentation (concerning the equipment/facilities the awardee would use in performing the contract) that may have influenced the agency to find the awardee's proposal technically acceptable is denied where review of the entire record, including the awardee's initial and best and final offers, reveals no misrepresentation.
 2. Protest alleging that the agency incorrectly rated the awardee's management approach as substantially equal to the protester's management approach (*i.e.*, both were rated as acceptable) since the protester is the incumbent contractor and will incur no downtime while the awardee will incur downtime is denied where: (1) the request for proposals clearly stated that proposals would be rated as acceptable or not on this evaluation factor, not on the basis of comparing one proposal to another; (2) the awardee's proposal contained a milestone chart showing the start and completion dates of all critical activities that the protester would undertake in order to meet the performance start date; and (3) the agency reasonably found the awardee's proposal acceptable on this factor.
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DECISION

Intra-Med Services, Inc., the incumbent contractor, protests the Navy's award of a contract for magnetic resonance imaging (MRI) services to Medical Technologies of Hampton Roads pursuant to request for proposals (RFP) No. N00140-96-R-N140.

The protester contends that the contract was improperly awarded to Medical Technologies because: (1) the agency's evaluation relied upon Medical Technologies's misrepresentation that it would use the MRI facility used by Intra-Med in performing the present contract; (2) the Navy incorrectly evaluated

proposals under the management approach evaluation factor; and (3) the agency relaxed a material requirement of the RFP--i.e., the start-up date--in favor of Medical Technologies.¹ We deny the protest.

Issued on December 6, 1995, the RFP solicited offers for providing MRI services for the radiology department at the Naval Medical Center, Portsmouth, Virginia, for a base period of 5 months or less, depending upon the actual award date, with options for 20 additional months. The RFP contemplated a firm, fixed-price contract with the contractor installing, maintaining, and operating an MRI unit and supporting equipment as well as modular buildings to house the MRI unit and for patient/radiologist use. The RFP required the contractor to install the facilities and equipment in a walled courtyard in the middle of the Medical Center and to begin performing MRI services within 60 days after contract award. The RFP stated: "The Government intends to make a single award to the eligible, technically acceptable, responsible offeror whose total offer on all items is the lowest priced." The RFP further stated: "Award will be made to the eligible, responsible, technically acceptable offeror whose offer, conforming to the solicitation, is determined most advantageous to the Government price and past performance considered."

The RFP explained that proposals would first be evaluated to determine whether they were technically acceptable on equipment/building specifications and management approach evaluation factors. Technically acceptable proposals would then be evaluated on past performance and price to determine which was the most advantageous to the government. The RFP stated that price was considered more important than past performance.

Three offers were received by the January 16, 1996, closing date.² The Navy determined that Intra-Med's proposal contained no deficiencies in the equipment/building specifications and management approach factors and was exceptional in past performance. The Navy also determined that there were no deficiencies in Medical Technologies's proposal in the management approach factor and rated

¹The protester raised a number of other issues in its protest, and the protester, agency, and intervenor submitted voluminous arguments on the protest issues. In a June 5, 1996, telephone conference with all parties, we dismissed several of the issues as untimely or otherwise not appropriate for consideration on the merits. We discuss here only the arguments that are both significant and relevant to resolving the remaining viable issues.

²As the agency's actions regarding the third offeror are not germane to the protest issues, we will limit our discussion to the proposals of Intra-Med and Medical Technologies.

Medical Technologies's past performance as exceptional. However, the Navy noted deficiencies in Medical Technologies's proposal under the equipment/building specifications factor. The proposed prices of the three offers were within 10 percent of each other and, after considering the technical evaluation team's recommendations, the contracting officer kept all three offers in the competitive range.

Discussions were held and best and final offers (BAFO) were received and evaluated. The agency found that Medical Technologies had corrected the deficiencies in its proposal and determined both Intra-Med's and Medical Technologies's BAFOs to be technically acceptable on the equipment/building specifications and management approach evaluation factors, and exceptional on past performance. Intra-Med's total proposed BAFO price was \$1,855,000 and Medical Technologies's was \$1,714,725. After performing a price analysis, the contracting officer determined that Medical Technologies's lowest-priced offer was most advantageous and awarded Medical Technologies the contract on April 30. After being debriefed, Intra-Med filed this protest in our Office.

The protester alleges that Medical Technologies engaged in an improper "bait and switch" because Medical Technologies proposed on the basis of using Intra-Med's MRI facility, which Intra-Med has not and will not agree to lease to Medical Technologies. Therefore, Intra-Med argues that Medical Technologies's proposal contained a material misrepresentation which may have influenced the Navy to find that Medical Technologies's proposal was technically acceptable on the equipment/building specifications factor.

Under the terms of the RFP, an offeror other than Intra-Med could propose using Intra-Med's MRI facility, contingent upon securing an agreement from Intra-Med that would allow its use. In fact, the RFP specifically contemplated that offers could properly be based upon using the MRI facility that was used by Intra-Med in performing the predecessor contract, stating: "Services to be furnished hereunder shall be performed from 01 May 1996 or 60 days after date of contract, whichever is later, except if current in-place buildings and equipment is used then start date is 01 May 1996" [Emphasis added.]³

³To the extent that Intra-Med is protesting that other offerors could not be considered acceptable if they proposed to use the MRI facility presently used by Intra-Med, the protest is untimely. It should have been clear to Intra-Med from the RFP that offers proposing to use the incumbent's MRI facility would be considered, but Intra-Med waited until after the closing date had passed and the entire procurement was completed to protest on this basis. 4 C.F.R. § 21.2(a)(1) (1996); see also Air Sal Leasing, Inc., B-265938, Jan. 16, 1996, 96-1 CPD ¶ 83.

However, our examination of the record, including Medical Technologies's proposals, reveals no misrepresentation by Medical Technologies. Medical Technologies's initial proposal clearly indicated that Medical Technologies had a specific MRI unit and modular building that Medical Technologies would use if awarded the contract. The proposal stated that, as an alternate to the specific MRI unit described in its proposal, Medical Technologies would use Intra-Med's MRI unit "if available" and noted that if Medical Technologies was awarded the contract "it is highly likely that [Intra-Med's] alternate equipment will be available as an option." During discussions, the Navy asked Medical Technologies to provide only one proposal—either a new MRI facility or the existing Intra-Med facility—and, if the offer was to be based upon using Intra-Med's MRI facility, to provide documentary evidence of its availability. In its BAFO, Medical Technologies offered its own modular building and MRI unit; the alternate proposing Medical Technologies's MRI facility was deleted. Thus, Medical Technologies did not misrepresent what MRI facility/equipment it was proposing, and we find no merit to the protester's allegation.

The protester also contends that the Navy incorrectly rated Medical Technologies's proposal as substantially equal to Intra-Med's proposal (*i.e.*, both were rated acceptable) under the management approach evaluation factor. The protester points out that the RFP stated that the Navy's "overwhelming concern" was to minimize downtime during the transition period. Intra-Med alleges that the Navy's changing contractors will entail at least 2 months of downtime in which the Navy will be without MRI services or will be required to have the services performed at local hospitals or other MRI facilities. Intra-Med also alleges that the transition costs to the Navy, including the cost of having hundreds of MRI exams performed at private facilities outside of Intra-Med's current contract or Medical Technologies's new contract and the actual costs of removing Intra-Med's MRI facility from the courtyard, will amount to more than \$2 million.⁴ Intra-Med asserts that, since Intra-Med would incur no downtime delay, the Navy should have rated Medical Technologies's proposal lower than Intra-Med's proposal on the management approach evaluation factor.

⁴To the extent that Intra-Med is protesting that the Navy should have considered transition costs, the protest is without merit. We dismissed this protest ground after a telephone conference with the parties on June 5, 1996. Nonetheless, Intra-Med continued to argue in subsequent submissions that these alleged transition costs would be substantial and should have been considered by the Navy in its evaluation of proposals. While transition costs may be an evaluation factor in appropriate circumstances, an agency may only evaluate them if the RFP advised offerors that such costs were to be evaluated; here, the RFP did not list transition costs as an evaluation factor. Cherokee Elec. Corp., B-240659, Dec. 10, 1990, 90-2 CPD ¶ 467.

In reviewing an agency's evaluation of proposals, we will not reevaluate proposals but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the stated evaluation criteria. See Simms Indus., Inc., B-252827.2, Oct. 4, 1993, 93-2 CPD ¶ 206. In our opinion, the Navy's evaluation was both reasonable and consistent with the RFP's stated evaluation scheme.

For management approach, the RFP basically required only that offers include a chart listing, in chronological order, the sequence of critical events from contract award to start of service. In addition, the RFP required the contractor to begin performing MRI services within 60 days after contract award. As noted above, the RFP stated that offers would be evaluated for technical acceptability—that is, on a go/no go basis—on two evaluation factors—equipment/building specifications and management approach.

Our examination of Medical Technologies's proposal reveals that it contained a clear, concise progress chart showing the start and completion dates for all critical events from the date of contract award to commencement of MRI services under the contract. The milestone chart also showed the various activities that Medical Technologies would be conducting in order to begin doing the MRI work on time. Contrary to the protester's assertion that Medical Technologies would take about 99 days to begin services, Medical Technologies's milestone chart showed that Medical Technologies would be prepared to begin performing approximately 35 days after it was awarded the contract.⁵ The fact that awarding the contract to Intra-Med rather than Medical Technologies would be less disruptive and would result in no downtime at all is not relevant here since it was clear from the RFP that offers were not to be evaluated on a comparative basis, but only for acceptability. As Medical Technologies's proposal showed a schedule that would easily meet the RFP's commencement date, we have no basis to find unreasonable the Navy's determination that Medical Technologies's proposal was acceptable under this evaluation factor.

The protester next contends that the Navy relaxed the start date of the contract for Medical Technologies. The protester states that, since the contract was awarded to Medical Technologies on April 30 and the RFP required the contractor to begin

⁵As Medical Technologies did not know exactly when the Navy would award the contract, Medical Technologies's milestone chart included an approximately 60-day period from January through March in which Medical Technologies expected the contract might be awarded. It appears that Intra-Med erroneously included this 60 days in estimating that Medical Technologies would take 99 days or more to begin the work. It is clear, however, that Medical Technologies's chart showed its intent to start preparatory work on the contract award date and to begin performing MRI exams approximately 35 days later.

performing MRI services within 60 days after award, Medical Technologies was required to commence performance no later than July 1. The protester argues, however, that the agency will not require Medical Technologies to begin performing until August or even later. We find no merit to Intra-Med's argument.

The RFP did not contain a certain date upon which performance was to begin; instead, the RFP required performance to begin no later than 60 days after award. The RFP required each proposal to include a milestone chart showing how the 60-day performance requirement would be met and, as discussed above, each proposal was rated as acceptable or not on this requirement. It is clear from the evaluation record that all offers were evaluated on the same basis—i.e., whether they were prepared to begin performing MRI services within 60 days after being awarded the contract—and that Medical Technologies was ready and willing to do just that, that is, meet the contract start date for performance. It is also clear from the record that the primary reason that Medical Technologies was not able to begin performing MRI services by July 1 was that Intra-Med was still performing the services under its contract with the Navy, and because Intra-Med apparently will take more than 2 months from the date its contract expired (June 30), rather than the 5 days allotted under its contract, to remove its MRI unit and modular buildings from the courtyard. Medical Technologies cannot begin to install its own MRI unit and modular building into the courtyard until Intra-Med has completed removal of its MRI facility as the new facility is to occupy the same space. In addition, by filing its protest, Intra-Med triggered the automatic stay of performance by Medical Technologies under the protested contract. These delays, in our view, do not affect the propriety of the award and certainly do not prejudice the protester.

The protest is denied.

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